

REMARKS

Claims 57-67 are pending. By this amendment, claim 57 is amended. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 57, 59, 60 and 64 through 66 were rejected under 35 U.S.C. §102(b) over Jump et al. (U.S. Patent No. 4,959,517). This rejection is respectfully traversed.

Claim 57 is directed to a method of blending food product in a container in which the container is charged with food product and cooled to a storage temperature, the container is fitted with a blending element located in the container, a closure member is applied to the top of the container to seal the container, the container, with the food product contained therein, is removed from storage and is located in a blending position, which is within a microwave enclosure, the food product is subjected to microwave energy to heat the food product and bring the food product from a storage temperature to a temperature at which it may be blended, in said blending position, the blending element is releasably located in driving engagement with a drive motor external to the microwave enclosure and extending through and adjacent to the closure member to blend the food product in the container after heating the food product, and the blended food product is dispensed from the container.

Jump et al. does not teach or suggest this subject matter. First, Jump et al. does not teach that the container is charged with food product cooled to a storage temperature. There is no teaching or suggestion that the container of Jump et al. is cooled to a storage temperature. Second, Jump et al. does not teach that the container, with the food product therein, is removed from cooled storage and is located in a blending position, as recited in claim 57. Third, Jump et al. does not teach that the food product is subjected to microwave energy to heat the food product and bring the food product from the storage temperature to a temperature at which it may be

blended in said blending position. Instead, Jump et al. is directed to stirring of a product being heated by microwave radiation, in order to evenly distribute the heat throughout the product.

Fourth, Jump et al. does not teach or disclose a blending element that is releasably located in driving engagement with a drive motor external to the enclosure and extending through and adjacent to the closure member to blend the food product in the container after heating of the food product.

Dependent claims 59, 60 and 64 through 66 are patentable by virtue of their dependency on claim 57, in addition to the further features they recite.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 58 and 61 were rejected under 35 U.S.C. §103(a) over Jump et al. in view of Boulard. This rejection is respectfully traversed as claims 58 and 61 depend from claim 57, which is allowable for the reasons described above. Boulard does not make up for the deficiencies noted above with respect to Jump et al. Instead, Boulard is solely concerned with heating of a rotating vessel using a wave spreader. Further, Applicant respectfully submits that this arrangement is not suitable for use in a blending operation, and the disclosure of Boulard is not concerned with blending products within a container.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 62 was rejected under 35 U.S.C. §103(a) over Jump et al. in view of Reed (U.S. Patent No. 2,626,133). This rejection is respectfully traversed.

Claim 62 is allowable since it depends from claim 57, which is allowable for the reasons described above. In addition, Reed does not make up for the deficiencies noted above with respect to Jump et al. For example, Reed specifically teaches that in use, the cup 56a is removed from the carriage and the hard frozen comestible to be treated is introduced therein, i.e., Reed

does not teach or suggest that the container is charged with food product and cooled to a storage temperature, as recited in claim 57. Likewise, Reed does not teach or suggest that the container, with the food product contained therein, is removed from cooled storage and is located in a blending position, which is in a microwave enclosure.

In addition, Applicant respectfully submits that there is no motivation to combine the teachings of Jump et al. with Reed. In particular, Reed is directed to a high strength auger shown in Figures 4, 6, 8 and 9 which is required to process a hard frozen comestible which is in the temperature range of -20°F to +12°F. See column 6, lines 40 through 43. Even after the auger has processed the frozen comestible, the temperature of the products only between -10°F to +18°F. Applicant respectfully submits that Jump et al. is not suitable for use for the mixing of such frozen comestibles as taught in Reed, especially since Reed is directed toward subjecting the material in the cup to a vigorous preliminary breaking and stirring action as the auger becomes buried therein. The stirring vanes in Jump et al. are suitable for stirring of chili, eggs, etc., not for augering frozen comestibles, kept at temperatures below 18°F.

In addition, the operation of Reed does not lend itself to combination with Jump et al. In particular, in the apparatus of Reed, the auger forces the frozen comestible out of the bottom of the cone shape receptacle 56, to be received by a separate receptacle. Accordingly, Applicant respectfully submits that the structures of Jump et al. and Reed are directed to mutually exclusive devices and there is no motivation, outside Applicant's own disclosure, to combine these references, absent impermissible hindsight.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 63 was rejected under 35 U.S.C. §103(a) over Jump et al. in view of Fiedler (U.S. Patent No. 4,659,575) and Reed. Further, claim 67 was rejected under 35 U.S.C. §103(a) over

McGILL
Appl. No. 09/913,330
January 24, 2005

Jump et al. These rejections are respectfully traversed as claims 63 and 67 depend from claim 57, which is allowable for the reasons described above.

Reconsideration and withdrawal of the rejection are respectfully requested.


In view of the above amendments and remarks, Applicant respectfully submits that all of the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desired to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Paul T. Bowen
Reg. No. 38,009

PTB:glf
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100